Supreme Court, U.S.
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(3)

No. 02-1064

IN THE

Supreme Court of the United States

PETER ROEHSLER,
Petitioner

v.

MIDDLESEX COUNTY HEALTH DEPARTMENT,
Respondent

On Petition For Writ Of Certiorari
To The Supreme Court of New Jersey

REPLY TO BRIEF IN OPPOSITION

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POINT I

WHERE RESPONDENT HAS ASSERTED A FACT NOT IN EVIDENCE, THAT IS FALSE, AND BASED ITS ARGUMENT THEREON, THAT ARGUMENT SHOULD BE DISMISSED.

Respondent's brief, in its Summary of Argument, page 6, states: "This Court, as well as the courts of the State of New Jersey, have held that in a pervasively regulated industry such as this [the Petitioners and his tenants], warrantless searches may be conducted...

Neither Petitioner nor any of his tenants operate "pervasively regulated industries." Indeed, that assertion has never been made prior to this. It is utterly false.

The opinion of the Superior Court, which has not been modified by any higher court, recognized that this was true when it held that "there's a connection between the highly regulated industry [solid waste] [and] those companies [the Petitioner's and his tenants]." (T7/6/01, 16) That court's ruling made it clear that although it saw a connection between the Petitioner's and his tenants' businesses and the pervasively regulated solid waste industry, it found that Petitioner and his tenants operated ordinary non pervasively regulated businesses.

Respondent's argument is based on the premise that Petitioner's business and those of his tenants are highly regulated industries. The cases cited and the standards stressed all clearly apply to highly regulated industries or businesses and not ordinary businesses such as Petitioner's and his tenants. Because of that false premise the argument should fail.

Finally Petitioner addresses Respondent's argument that "it would be unreasonable and excessively burdensome for the department to apply to a court for a search warrant." That issue has been discussed by this Court which has consistently held that requiring warrants to inspect will not impose serious burdens on the inspection system or the courts.[1] It certainly would have been a easier than filing a verified complaint and an order to show cause in the Superior Court of New Jersey.

Respondent has failed to address Petitioner's argument and instead, submitted facts not in evidence, that are false, and based its argument on them, therefore its argument against issuance of the writ should fail.

1. see *Marshall v. Barlow's Inc,.436 U.S. 307 (1978); Camara v. Municipal Court, 387 U. S. 523 (1967)*

POINT II

WHERE RESPONDENT HAS RAISED THE ISSUE OF STATUTES AND A COUNTY PLAN THAT CAN NOT APPLY TO THE PETITIONER, ITS CHALLENGE TO THIS PETITION SHOULD FAIL.

Respondent has cited N.J.S.A. 13:1E-9d(2) in its brief, which applies to "solid waste collection and disposal." It is more easily understood when the relevant sections are reproduced as follows:

> N.J.S.A. 13:1E-9a. "All codes, rules and regulations adopted by the department related to **solid waste collection and disposal** have the force and effect of law...
>
> The department and the local board of health, or the county health department, as the case may be, shall have the right to enter a solid waste facility at any time in order to determine compliance with the registration statement and engineering design, and with the provisions of all applicable laws or rules and regulations adopted pursuant thereto."
>
> 13:1E-9d "The commissioner, a local board of health or county health department may institute an action or proceeding in the Superior Court for injunctive and other relief, including the appointment of a receiver for any **violation of this act, or of any code, rule or regulation promulgated, permit issued or solid**

waste management plan adopted pursuant to this act and said court may proceed in the action in a summary manner. In any such proceeding the court may grant temporary or interlocutory relief, notwithstanding the provisions of R.S. 48:2-24.

Such relief may include, singly or in combination:

13:1E-9d(2) Assessment of the **violator** for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and litigating the case under this subsection." (emphasis supplied)

This clearly applies to a violation of the "Solid Waste Management Act" which can not apply to the Petitioner, because he has never been charged with or convicted of a violation. Additionally he is not engaged in either the collection or disposal of solid waste.

Respondent cites the County Plan, Chapter 2, Section D (11), which it paraphrased. What it states at length follows:

Chapter 2, Section D(11) "Any violation of those rules/regulation governing solid waste in the County of Middlesex, State of New Jersey falling under the authority of the Middlesex County Public Health Department are subject to

prosecution in the Superior Court of Middlesex County. The violator, if found guilty, shall be liable to pay the Court Judgement to the Middlesex County Health Department.

In addition, any person(s) found guilty of a solid waste violation shall be liable for all costs incurred by the County of Middlesex including all litigation costs, fees and expenses...

Penalties for violations of the above requirements are contained in **Appendix VI.**

Appendix VI: "The following penalties are established for hauler violations of **Chapter 2, Section D** of the Solid Waste Management Plan. Non-Submittal and/or falsification of Monthly Tonnage Report; and/or non payment of Solid Waste Management Fees:

1st offense $750.00

2nd offense.....$1,000.00

Each subsequent offense within a 12 month period shall double the penalty, i.e.

3rdoffense $2,000.00

4th offense.....$4,000.00

5th offense.....$8,000.00

Late Submittal of monthly Tonnage Report and/or non payment of Solid Waste Management Fees

$50 per day up to 15 days,

after 5 days, offense is considered

Non-Submittal.

Chapter 2, Section D and Appendix VI clearly and unmistakably apply to "waste haulers" and not to an individual who would stand up for his rights. Respondent goes so far beyond creative construction as to reach the height of absurdity where it tries to apply this regulation to your Petitioner.

Petitioner has never been accused of any violations under Chapter 2, Section D (11). How could he possibly be, where he could not have violated it because he is not required to file any "monthly tonnage reports" or pay any "solid waste management fees."

If, indeed, Petitioner had not been denied his right to due process guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution by the New Jersey courts he would have had the opportunity to raise this argument and enforce and protect his rights.

Once again Respondent asserts that its proposed form of order in the New Jersey Superior Court, was conforming when it was clearly not, and should never have been either submitted or signed. Indeed, Petitioner's objection to that order was sufficient notice to the court that a hearing was required because his objection was not frivolous and the proposed form of order clearly did not memorialize the court ruling.

Respondent had no statutory authority to seek or obtain costs or fees from the Petitioner and its bold insertion of them in a proposed form of order, did not memorialize court's ruling, and was objected to by Petitioner, clearly calling for further judicial consideration if there was to be any protection of Petitioner's rights under the Fifth and Fourteenth Amendments of the United States Constitution.

Finally your Petitioner most respectfully submits that it does not constitute "obstinacy", as Respondent states, to seek the protection provided by the United States Constitution and that he should not have been penalized for doing so.

CONCLUSION

For the reasons set forth above and the reasons set forth in the petition, your Petitioner most respectfully urges this Honorable Court to grant a writ of certiorari.

Respectfully submitted,

Peter Roehsler
Petitioner, pro se

February 18, 2003